

BUREAU OF AUTOMOTIVE REPAIR

FINAL STATEMENT OF REASONS

HEARING DATES:

November 16 and 18, 2005

**SUBJECT MATTER OF
PROPOSED REGULATIONS:**

Revised Official Automotive Repair Dealer's Sign

SECTION AFFECTED:

§§ 3351.3 & 3351.4, Title 16, Division 33, Chapter 1,
Article 6, California Code of Regulations

UPDATED INFORMATION:

The *Initial Statement of Reasons* is included in the file. No changes have been made which would warrant a change to the information contained therein.

LOCAL MANDATE:

A mandate is not imposed on local agencies or school districts.

SMALL BUSINESS IMPACT:

This action will not have a significant adverse economic impact on small businesses. This determination is based on the following facts or evidence/documents/testimony:

1. Each automotive repair dealer is required to display only one official sign. In a 2003 statewide telephone survey of 37 sign vendors conducted by Bureau staff, the average cost of a replacement sign was found to be \$37.80. In a subsequent 2005 survey of 39 sign vendors, the average cost of a new sign was determined to be \$33.10.
2. Automotive repair dealers (ARDs) that are currently registered on the transition date for replacement of the sign will have the option of displaying a supplemental sign immediately below their previously compliant sign. Based on the information obtained in the two surveys (2003 and 2005) it is estimated that the average cost of a supplemental sign will be no more than \$10.00.
3. ARDs will also be required to give a copy of the sign to each customer with whom they conduct business off-site. The sign may be reproduced from Figure 3, which can be obtained from the Bureau-published Laws and Regulations booklet or printed from

the CD-ROM supplied with that publication. The required identifying information for the dealer may be added with an appropriate rubber stamp before reproduction. The initial cost to an automotive repair dealer that conducts an exclusively *mobile* business, including a rubber stamp and a year's supply of copies of the sign, is estimated to be approximately \$139.80. The ongoing cost after the first year is estimated to be approximately \$124.80.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

This action does not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES:

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Bureau would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

OBJECTIONS OR RECOMMENDATIONS / RESPONSES:

The following comments/objections/recommendations were made, either in writing or orally during the public comment period or at the public hearings, regarding the proposed action:

1. Bob Haynes, BAR Liaison, Pep Boys Automotive, in oral testimony presented at the November 16, 2005 public hearing, offered the following comments and recommendations:

- a. I agree with everything that is being proposed in this regulatory action. On the auto repair dealer's sign, I agree with everything that is listed in the notification in its entirety, without exception.

This expression of support was accepted and considered in the adoption of the proposed action.

- b. I would like to state that I would be most in favor of the alternative three (as set forth in the Initial Statement of Reasons) with regards to getting the Web site message out. I do believe that there is sufficient room at the bottom of the sign if, in fact, we realize that the public is sensitive to the www. Internet-type addresses and when it's affixed to an existing sign, there is no longer the necessity for additional verbiage such as, "For additional information or assistance you may also visit the Bureau's Internet Web site at." An example of that would be the additional sign for the existing signs that gets that extra message out. It shows it

as five inches tall, whereas if we only had the www.autorepair.ca.gov address affixed to the lower part of the existing sign, I feel that those letters could be made large enough where they could be read from a distance and would certainly serve the purpose. I think we've got to realize that the people who would be using this type of an Internet address would have either their own computer or access to a computer. Therefore, this type of Internet address would be familiar to them as an information source from the BAR, if it's affixed to a BAR sign.

This comment/recommendation was rejected because:

As discussed in the *Initial Statement of Reasons*, alternative 3 was rejected because there is insufficient space to accommodate a sticker of a size necessary to present the Web site address in a print size and style consistent with the print of the other information. In order to be read from an acceptable distance, the print could be no smaller than the smallest print on the existing sign.

In rejecting alternative 3, the Bureau relied not only on the advice of sign manufacturers and vendors, but also on the advice of decal manufacturers and suppliers. The 2005 survey of sign vendors included vendors that also manufacture and/or supply stickers and decals. In the survey, those who responded were asked about the feasibility of using the decal or sticker alternative. In general, the respondents indicated that there would undoubtedly be inconsistencies between old signs produced by one manufacturer and a new sticker or decal produced by another. It might be difficult to match the two in order to maintain a clean, consistent and official appearance. It would also involve more effort to attach something to an existing sign than it would to simply take one down and put another one up; or to mount a supplemental sign below the existing one.

In addition to obtaining information through the survey, an examination was made of an actual full size official sign. Measurements were taken and it was determined that, in fact, there is not enough room at the bottom of the sign to accommodate the application of a decal.

Furthermore, the majority of survey respondents also indicated an unwillingness or outright refusal to provide decals or stickers, thereby limiting their availability. This limitation would make it very difficult for ARDs to obtain this item and would likely drive the cost up to as much or more than that of a supplemental sign.

Finally, while this alternative might have accomplished the goal of adding the Bureau's Web site address to the sign, it would not address any of the necessary corrective changes to the general text of the current sign.

2. Gene Morrill, Certified Auto, in oral testimony presented at the November 16, 2005 public hearing, offered the following comments and recommendations:

- a. I, too, believe that this is a good idea. The public is more Web site savvy than ever, of course, and needs a way to get a hold of people without having to ask us for information. They should be able to gain it on their own if they want to look and check out some things. So, as long as the cost is not exorbitant, which it doesn't look like it is, I believe this will help our industry and we should move forward with either a brand new sign or the attachment.

This expression of support was accepted and considered in the adoption of the proposed action.

- b. I agree that the easiest and quickest down and dirty way to do this would be to put a sticker on the existing signs. I, for the record, would be in favor of the sticker.

This comment/recommendation was rejected because:

Please refer to 1., b., above.

3. Brian Maas, Director of Government Affairs for the California Motor Car Dealers Association, in a letter dated November 16, 2005, offered the following comments and recommendations:

- a. Since the purpose of distributing a copy of the sign is to convey the information reflected in the sign to customers, we would suggest a modification of the proposed regulation to require distribution of a copy of the sign to only those customers who do not personally visit the principal business address shown on the ARD's registration in connection with the repair services being performed.

This comment/recommendation was rejected because:

The proposed regulatory action is intended to and, in fact already does limit the requirement for distribution of a copy of the sign to only those customers who do not personally visit the principal business address of the ARD. Specifically, the proposed language of subsection (b) of Section 3351.3 provides that the ARD shall provide a copy of the sign to every customer "[w]hen conducting business from other than the principal business address shown in an automotive repair dealer's registration." BAR intends and interprets that to mean that the requirement of providing a copy of the sign be limited to those customers who do not visit an ARD's principal place of business, if there is indeed a fixed business location.

- b. Alternatively, the proposed regulation could be modified to require a facsimile of the sign be posted on the outside of any repair vehicle utilized by an ARD in performing service work at an off-site location.

This comment/recommendation was rejected because:

There are simply too many variables that would make this an impractical and ineffective solution. As was pointed out in the *Initial Statement of Reasons*, a strict interpretation of current regulation would require the display of the current sign on the ARD's vehicle. With all the possible vehicle configurations, it is difficult to display the current sign on all vehicles that might be used. For example, the sign might fit on the exterior of a van, step van, or pickup truck with a shell, but probably not on a station wagon, sedan, or pickup truck without a shell. It would be difficult, complicated and confusing to establish a means to address the suitable display of the sign on the various types and configurations of vehicles that might be used in this context.

Furthermore, as was also pointed out in the *Initial Statement of Reasons*, in instances where the ARD goes to the customer's location (i.e., home or office) to provide on-site service and repairs, the customer may never actually see or come into contact with the ARD's vehicle and would not have an opportunity to view a posted sign. Therefore, the most practical and reliable way for the customer to be fully and properly informed of his or her rights and the options for resolving conflicts is to be provided with a copy of the sign.

- c. In reviewing the notice issue which the proposed regulation attempts to address, we believe that a better solution would be to modify the regulations governing invoices to require that BAR's Web site address and other key information from the sign be listed on the front or back of every invoice given to a customer. This simple and inexpensive change would eliminate the need to distribute a separate sheet of paper which is very likely to be lost or discarded by the customer, and would put a customer on notice that the BAR is available to address any questions or concerns the customer may have regarding the service work performed.

This comment/recommendation was rejected because:

The use of the copy of the sign in mobile or off-site service or repair transactions is intended to not burden the automotive repair industry with the expense of redesigning and reprinting their existing estimate/invoice stationary. This strategy may be especially important when considering that most ARDs rarely, if ever, conduct mobile or off-site service or repairs. Therefore, BAR finds this recommendation to be more burdensome than the proposed action for the following reasons:

- This recommendation is potentially more costly, complicated and confusing.
- This recommendation could require the revision of estimate/invoice forms for

- all ARDs; not just those who provide mobile or off-site service and repair.
- This recommendation could require ARDs that offer both fixed location and mobile service and repairs to maintain two different invoice forms.
 - This recommendation is not entirely consistent with current statutory provisions¹ that require the design and display of a sign, not the inclusion of specified information in printed forms.
 - This recommendation, in requiring information from the sign to be included in printed forms, could be duplicative of the statutory requirement to display the sign.
- d. If a copy of the sign must be delivered to a customer and an ARD is potentially subject to misdemeanor penalties for non-compliance², then it would appear that our members would have no choice but to require the customer to sign a document acknowledging receipt of the sign copy and to retain a copy of such document in the customer's file. This appears to be overly burdensome for a notice regulation and leads us to again suggest requiring the BAR Web site and other key information be listed on invoices.

This comment/recommendation was rejected because:

While it is true that any violation of the Automotive Repair Act³ (Act) or the regulations adopted under the Act, is deemed to be a misdemeanor pursuant to Business and Professions Code section 9889.20, the possibility of a criminal action being taken by a city or district attorney for failing to give a customer a copy of the sign is extremely remote. For example, failing to post the sign in compliance with Sections 3351.3 and 3351.4 in their present form is also potentially a misdemeanor, but in the more than 30-year existence of the Act and BAR, there has never been a criminal charge filed for such a violation.

The proposed action neither explicitly nor implicitly requires an ARD to obtain a receipt for delivery of a copy of the sign to a customer. Doing so might be desirable and a benefit to the ARD in the unlikely event of a dispute, but that would be entirely up to the discretion of the individual ARD. Therefore, obtaining and retaining a receipt is not a burden imposed by this proposed action.

There were no further comments, objections or recommendations received within the public comment period regarding the proposed action.

¹ Bus. & Profs. Code § 9884.17 provides, in pertinent part, that BAR is to design a sign that is to be placed in all ARD locations in a place and manner conspicuous to the public.

² Bus. & Profs. Code § 9889.20 provides, in pertinent part, that any person who fails to comply in any respect with the provisions of Ch. 20.3 of Div 3 of the Bus. & Profs. Code is guilty of a misdemeanor.

³ Bus. & Profs. Code, Div 3, Ch. 20.3, § 9880, et seq.